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Bernadette Rousseau		
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Court File No.

FEDERAL COURT

BETWEEN:

CANADIAN FRONTLINE NURSES AND KRISTEN NAGLE

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

APPLICATION UNDER SECTIONS 18 AND 18.1 OF THE *FEDERAL COURTS ACT*

NOTICE OF APPLICATION

TO THE RESPONDENT:

A PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the applicant. The relief claimed by the applicant appears below.

THIS APPLICATION will be heard by the Court at a time and place to be fixed by the Judicial Administrator. Unless the Court orders otherwise, the place of hearing will be as requested by the applicant. The applicant requests that this application be heard at 180 Queen Street West, Suite 200, Toronto, Ontario.

IF YOU WISH TO OPPOSE THIS APPLICATION, to receive notice of any step in the application or to be served with any documents in the application, you or a solicitor acting for you must file a notice of appearance in Form 305 prescribed by the *Federal Courts Rules* and serve it on the applicant's solicitor or, if the applicant is self-represented, on the applicant, WITHIN 10 DAYS after being served with this notice of application.

Copies of the *Federal Courts Rules*, information concerning the local offices of the Court and other necessary information may be obtained on request to the Administrator of this Court at Ottawa (telephone 613-992-4238) or at any local office.

IF YOU FAIL TO OPPOSE THIS APPLICATION, JUDGMENT MAY BE GIVEN IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU.

February 17, 2022

Issued by: _____

Address of local office:

180 Queen Street West, Suite 200

Toronto, ON M5V 3L6

TO: **THE ADMINISTRATOR**
Federal Court

AND TO: **THE ATTORNEY GENERAL OF CANADA**
Ontario Regional Office
Department of Justice Canada
120 Adelaide Street West, Suite 400
Toronto, Ontario M5H 1T1

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(service to be effected by filing with the Registry pursuant to s. 133 of the *Federal Court Rules* and s. 48 of the *Federal Courts Act*)

Application

1. This is an application for judicial review in respect of the Order in Council PC Number: 2022-106 proclamation of a public order emergency issued February 14, 2022 (the “Public Order Emergency Proclamation”) pursuant to subsection 17(1) of the *Emergencies Act*, RSC 1985, c 22 (4th Supp) (the “*Emergencies Act*”).

The applicant makes application for:

2. An Order, pursuant to Rule 317 of the *Federal Courts Rules* for production of all Orders in Council, minutes of meetings, cabinet submissions, memoranda, agreements and constituting documents relating to the Public Order Emergency Proclamation.
3. A declaration that the Respondent acted without jurisdiction or acted beyond its jurisdiction in issuing the Public Order Emergency Proclamation.
4. A declaration that the Public Order Emergency Proclamation violates the *Canadian Bill of Rights*, SC 1960, c 44 (the “*Canadian Bill of Rights*”), including the right of enjoyment of property and the right not to be deprived thereof except by due process of law.
5. A declaration, pursuant to section 52 of the *Constitution Act 1982*, being Schedule B to the *Canada Act 1982 (UK)*, 1982 c 11 (the “*Constitution Act 1982*”), that the Public Order Emergency Proclamation is inconsistent with section 2 of the *Charter of Rights and Freedoms* and not justified under section 1 of *Charter*.
6. A declaration that the Public Order Emergency Proclamation is unlawful and/or invalid.

7. An interim stay of the Public Order Emergency Proclamation and any regulations, orders or other measures issued or implemented pursuant to the Public Order Emergency Proclamation until this Application is heard on its merits.
8. An Order quashing the Public Order Emergency Proclamation and any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation.
9. Leave or an Order pursuant to Rule 302, if required, for this application for judicial review to include any regulations, orders, or other measures issued or implemented pursuant to the Public Order Emergency Proclamation, including, but not limited to, P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*.
10. A writ of prohibition prohibiting the Respondent from issuing further public order emergency proclamations in the absence of a “public order emergency” as defined in the *Emergencies Act*, which definition is not met in the current circumstances.
11. Costs of this Application on a substantial indemnity basis or in an amount that provides full indemnity.
12. Such further and other relief as this Honourable Court deems just.

The grounds for the application are:

The parties to this Application

13. The Applicant, Canadian Frontline Nurses (“CFN”), is a not-for-profit corporation duly incorporated under the *Canada Not-for-profit Corporations Act*. CFN is a proud advocate of medical freedom and its mission is to unite nurses across Canada, educate the public and ensure that Canadian healthcare reflects the highest ethical standards.

14. The Applicant, Kristen Nagle (“Nagle”) is a Canadian citizen residing in Ontario.

15. Nagle is a registered nurse and a member and director of CFN.

16. CFN and Nagle are opposed to unreasonable COVID-19 related mandates and restrictions that have been implemented by various levels of Canadian governments.

17. The Respondents are the Governor in Council, the Privy Council, and Her Excellency the Governor General in Council, all acting on behalf of Her Majesty the Queen (in right of Canada), and all represented by the named Respondent, the Attorney General of Canada.

Background: The Applicants’ Participation in The Freedom Convoy 2022 Protests in Ottawa

18. Starting on January 22, 2022, convoys of vehicles began to form and travel towards Ottawa. Ultimately, several convoys across Canada formed and thousands of vehicles converged on Ottawa on or about January 28, 2022, and the days that followed in support of what has been described and known as the “Freedom Convoy 2022 Protest”.

19. The Freedom Convoy 2022 Protest in Ottawa was ongoing as of the date of the Public Order Emergency Proclamation and continues as of the date of this Application.
20. The Freedom Convoy 2022 Protest in Ottawa is a peaceful demonstration based on the principles of unity and respect for all Canadians. One of the goals of the Freedom Convoy 2022 movement in Ottawa is to increase public awareness of the issues related to various levels of Canadian government implementation of COVID-19 mandates and restrictions, as well as to encourage these governments to repeal the divisive and unreasonable COVID-19 related mandates and restrictions.
21. The organizers of the Freedom Convoy 2022 movement have also called on the political class to refrain from indiscriminately labelling Canadian citizens with pejoratives, including allegations of racism and terrorism, given that this behaviour hinders open and respectful dialogue relating to the important issues which the Freedom Convoy 2022 Protest in Ottawa has raised. The objective of the Freedom Convoy 2022 is to end not only the divisiveness of the mandates and restrictions, but also the divisiveness which is engendered by the use of this type of language.
22. The Freedom Convoy 2022 Protest has increased the Canadian public's awareness with respect to the unreasonableness of government COVID-19 mandates and restrictions. It has shown other Canadians that there is a significant, dedicated movement of Canadians who oppose these measures. There has recently been a dramatic change in Canadian public opinion towards these mandates and restrictions as reflected in a January 31 Angus Reid poll that indicates that 54% of all Canadians want all COVID-19 restrictions to end. The Freedom Convoy 2022 Protest has played an instrumental role in changing Canadian public

opinion against the policies of the Trudeau government. The federal government, unlike the vast majority of jurisdictions both in Canada and around the world, has refused to commit to a timetable to eliminate restrictions and mandates and, in fact, has indicated an intention to impose even more. Recently, The Right Honourable Prime Minister of Canada, Justin Trudeau's ("Trudeau")("Prime Minister") approval ratings have dropped to near all-time lows.

23. CFN and Nagle support the right of all Canadians to assemble and engage in peaceful protest as a means of expressing their thoughts, beliefs, and opinions in a free and democratic society.

24. CFN is a participating group in the Freedom Convoy 2022. CFN and Nagle both support the Freedom Convoy 2022 Protest in Ottawa and its objectives. Nagle, as a representative of CFN, has given speeches in support of the Freedom Convoy 2022 Protest in Ottawa. CFN and Nagle have been and intend to continue to be peaceful participants and supporters of the Freedom Convoy 2022 Protest in Ottawa.

25. CFN and Nagle unequivocally do not support violence. CFN and Nagle denounce violence and do not view violence as a legitimate means of expression or as a means of achieving one's political ends. CFN and Nagle are not aware of any violence in connection with the Freedom Convoy 2022 Protest in Ottawa, nor is there any intention on the part of the Freedom Convoy 2022 for there to be any. The repeatedly stated goal of the Freedom Convoy 2022 Protest is for it to be peaceful and to ensure that it remains that way.

The Respondent Invokes the Emergencies Act to Suppress Political Dissent

26. The Prime Minister does not support the Freedom Convoy 2022 Protests or its goals and has decried its supporters. On January 26, 2022, Prime Minister Trudeau made the following statement:

We know that the way through this pandemic is by getting everyone vaccinated and the overwhelming majority close to ninety percent of Canadians have done exactly that. **The small fringe minority of people who are on their way to Ottawa, or who are holding unacceptable views that they're expressing, do not represent the views of Canadians** who have been there for each other who know that following the science and stepping up to protect each other is the best way to continue to ensure our freedoms, our rights, our values as a country. [*emphasis added*]

27. Prime Minister Trudeau has previously referred to individuals who choose not to get vaccinated as often being racist and misogynistic extremists. He has rhetorically asked whether these people “should be tolerated.”

28. On February 16, 2022 during question period, Prime Minister Trudeau, in response to a question by a Jewish MP and descendant of Holocaust survivors, accused the Conservatives of “standing with people who wave swastikas” because of their opposition to the invocation of the *Emergencies Act*.

29. The invocation of the *Emergencies Act* is improperly motivated by a design to target, threaten and punish individuals who have different views from that of the Prime Minister with respect to COVID-19 mandates and restrictions. The political emergency that the Prime Minister is subjectively experiencing because of the Freedom Convoy 2022 Protest’s effectiveness in reducing support for his government’s non-science based COVID-19

mandates and restrictions falls far short of constituting an actual national emergency as defined in the *Emergencies Act*.

30. The invocation of the *Emergencies Act* now threatens Freedom Convoy 2022 Protestors and their supporters (those who hold differing views from the Prime Minister with respect to COVID-19 restrictions and mandates which the Prime Minister has stated are “unacceptable”) with deprivation of the use of their financial assets without due process of law.
31. The Honourable David Lametti, Minister of Justice and Attorney General of Canada, labelled some of those who support the Freedom Convoy 2022 Protestors as members of “a pro-Trump movement” that are donating “hundreds of thousands and millions of dollars to this kind of thing”. The Minister of Justice has said such supporters “ought to be worried” about the bank freezing their accounts. The freezing of financial property without due process contrary to the *Canadian Bill of Rights* has already occurred.
32. The freezing of financial assets of those who hold differing viewpoints from that of the government in power is a hallmark of undemocratic, totalitarian regimes. The federal government’s actions in purporting to invoke the *Emergencies Act* have caused worldwide respect for Canadian democracy and freedom to be greatly diminished. They have reflected poorly on Canada’s stature in the international community and will undoubtedly call into question Canada’s ability to be a positive influence for Human Rights in the international community. The President of El Salvador has suggested that the Canadian government’s credibility with respect to democracy and freedom is now worth “zero.”

News reports and comedians in the United States and around the world have mocked the undemocratic and totalitarian steps the Trudeau government has taken to punish Canadians who hold views contrary to those of the Prime Minister. It is clear that the invocation of the *Emergencies Act* has much more to do with crushing and intimidating dissent than dealing with any “emergency”.

The Respondent Invokes the Emergencies Act

33. On February 14, 2022, the Governor General in Council, on the recommendation of the Minister of Public Safety and Emergency Preparedness, directed that a proclamation be issued directing that a public order emergency exists throughout Canada and necessitates the taking of special temporary measures for dealing with the emergency.

34. The Public Order Emergency Proclamation specifies the nature of the state of affairs constituting the alleged emergency as follows:

(i) the continuing blockades by both persons and motor vehicles that is occurring at various locations throughout Canada and the continuing threats to oppose measures to remove the blockades, including by force, which blockades are being carried on in conjunction with activities that are directed toward or in support of the threat or use of acts of serious violence against persons or property, including critical infrastructure, for the purpose of achieving a political or ideological objective within Canada,

(ii) the adverse effects on the Canadian economy — recovering from the impact of the pandemic known as the coronavirus disease 2019 (COVID-19) — and threats to its economic security resulting from the impacts of blockades of critical infrastructure, including trade corridors and international border crossings,

(iii) the adverse effects resulting from the impacts of the blockades on Canada’s relationship with its trading partners, including the United States, that are detrimental to the interests of Canada,

(iv) the breakdown in the distribution chain and availability of essential goods, services and resources caused by the existing blockades and the risk that this breakdown will continue as blockades continue and increase in number, and

(v) the potential for an increase in the level of unrest and violence that would further threaten the safety and security of Canadians

35. On February 15, 2022, the Governor General in Council issued P.C. 2022-107, the *Emergency Measures Regulations* and P.C. 2022-108, the *Emergency Economic Measures Order*, pursuant to the Public Order Emergency Proclamation.

36. Sections 2, 4, and 5 of *Emergency Measures Regulations* prohibit persons from, amongst other things:

- (a) Participating in or travelling to or within an area where “a public assembly that may reasonably be expected to lead to a breach of the peace” by causing a “serious disruption of the movement of persons or goods or the serious interference with trade”; and
- (b) Directly or indirectly, using, collecting, providing, making available or inviting a person to provide property to facilitate or participate in a public assembly that may reasonably be expected to lead to a breach of the peace by causing a serious disruption of the movement of persons or goods or the serious interference with trade.

37. The *Emergency Economic Measures Order* defines an individual or entity that is engaged, directly or indirectly, in an activity prohibited by sections 2 to 5 of the *Emergency Measures Regulations* as a “designated person”. The *Emergency Economic Measures Order* requires financial institutions and entities to cease from:

- (a) dealing in any property, wherever situated, that is owned, held or controlled, directly or indirectly, by a designated person or by a person acting on behalf of or at the direction of that designated person;
- (b) facilitating any transaction related to a dealing referred to in paragraph (a);
- (c) making available any property, including funds or virtual currency, to or for the benefit of a designated person or to a person acting on behalf of or at the direction of a designated person; or
- (d) providing any financial or related services to or for the benefit of any designated person or acquire any such services from or for the benefit of any such person or entity.

38. On February 15, 2022, members of the Ottawa Police Service distributed leaflets titled “Ottawa Police Service Notice to Demonstration Participants” to participants in the Freedom Convoy 2022 Protest in Ottawa which set out, amongst other things, that:

You must leave the area now. Anyone blocking streets, or assisting others in the blocking streets, are committing a criminal offence and you may be arrested. You must immediately cease further unlawful activity or you will face charges.

...

The Federal Emergencies Act allows for the regulation or prohibition of travel to, from or within any specified area. This means that anyone coming to Ottawa for the purpose of joining the ongoing demonstration is breaking the law.

The Public Order Emergency Proclamation is Ultra Vires and Unreasonable

39. The state of affairs set out in the Public Order Emergency Proclamation does not constitute a national emergency or a public order emergency; the issuing of the Public Order Emergency Proclamation is unreasonable in the circumstances.

40. In issuing the Public Order Emergency Proclamation without satisfying the conditions set out in the *Emergencies Act*, the Respondent has acted beyond its lawful jurisdiction.

There is No National Emergency

41. Section 3 of the *Emergencies Act* defines a “national emergency” as:

an urgent and critical situation of a temporary nature that

- (a) seriously endangers the lives, health or safety of Canadians and is of such proportions or nature as to exceed the capacity or authority of a province to deal with it, or
- (b) seriously threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada

and that cannot be effectively dealt with under any other law of Canada.

42. Section 16 of the *Emergencies Act* defines a “public order emergency” as meaning:

an emergency that arises from threats to the security of Canada and that is so serious as to be a national emergency

43. Section 16 of the *Emergencies Act* defines “threats to the security of Canada” as having the meaning assigned by section 2 of the *Canadian Security Intelligence Service Act*.
Section 2 of the *Canadian Security Intelligence Service Act* defines “threats to the security of Canada” as:

- (a) espionage or sabotage that is against Canada or is detrimental to the interests of Canada or activities directed toward or in support of such espionage or sabotage,
- (b) foreign influenced activities within or relating to Canada that are detrimental to the interests of Canada and are clandestine or deceptive or involve a threat to any person,
- (c) activities within or relating to Canada directed toward or in support of the threat or use of acts of serious violence against persons or property for the purpose of achieving a political, religious or ideological objective within Canada or a foreign state, and
- (d) activities directed toward undermining by covert unlawful acts, or directed toward or intended ultimately to lead to the destruction or overthrow by violence of, the constitutionally established system of government in Canada,

but does not include lawful advocacy, protest or dissent, unless carried on in conjunction with any of the activities referred to in paragraphs (a) to (d).

44. There are no reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists as a result of the Freedom Convoy 2022 Protest in Ottawa.
45. Even if there are reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists, which there are not, the provinces are capable and have the authority to deal with such a situation.
46. There is no urgent or critical situation that seriously endangers the lives, health or safety of Canadians that cannot be effectively dealt with under the laws of Canada that were in force prior to the Public Order Emergency Proclamation.
47. At least seven Provincial premiers have expressed that they do not view the invocation of the *Emergencies Act* as being necessary and/or were not in favour of invoking the *Emergencies Act*, namely: Alberta Premier Jason Kenney, Saskatchewan Premier Scott Moe, Quebec Premier François Legault, Manitoba Premier Heather Stefanson, Nova Scotia Premier Tim Houston, New Brunswick Premier Blaine Higgs, and Prince Edward Island Premier Dennis King,
48. The situation at the Ambassador Bridge and the situation at the border near Coutts, Alberta, were effectively resolved prior to the Public Order Emergency Proclamation. CFN nor Nagle had a connection with those protests.

49. The Freedom Convoy 2022 Protest in Ottawa is a peaceful expression of dissent and does not constitute “a threat to the security of Canada” as defined in the *Canadian Security Intelligence Service Act*.

50. There are no reasonable grounds to believe that an urgent and critical situation that threatens the ability of the Government of Canada to preserve the sovereignty, security and territorial integrity of Canada exists. It does not appear that the Respondent asserts any.

The Public Order Emergency Proclamation is Inconsistent with the legislative intent of the Emergencies Act, the Bill of Rights and the Charter of Rights and Freedoms

51. The Public Order Emergency Proclamation is inconsistent with the scheme of the *Emergencies Act*, the object of the *Emergencies Act*, and the intention of Parliament at the time of the *Emergencies Act*'s drafting.

52. The *Emergencies Act* is expressly subject to the *Canadian Charter of Rights and Freedoms* and the *Canadian Bill of Rights*, “particularly with respect to those fundamental rights that are not to be limited or abridged even in a national emergency.”

53. There are specific provisions contained within the *Emergency Economic Measures Order* which require financial institutions to deprive participants or supporters of those in the Freedom Convoy 2022 Protest of their property with a complete disregard for due process of law.

54. The Public Order Emergency Proclamation, and the regulations and orders that have been made pursuant thereto, are inconsistent with the *Canadian Bill of Rights*. In particular the

Public Order Emergency Proclamation, and the regulations and order that have flowed from same, infringe on the following fundamental rights and freedoms set out in the *Canadian Bill of Rights*:

- (a) the right of individuals not be deprived of enjoyment of property except by due process of law;
- (b) freedom of speech; and
- (c) freedom of assembly and association.

55. Section 2 of the *Canadian Bill of Rights* provides that the rights and freedoms recognized in the *Canadian Bill of Rights* are not to be abrogated, abridged or infringed in a law of Canada unless expressly declared by an Act of Parliament. The *Emergencies Act* does not contain a declaration that it shall be applied and construed to abrogate, abridge or infringe on the rights and freedoms recognized and declared in the *Canadian Bill of Rights*. Rather, it declares the opposite: the *Emergencies Act* is expressly subject to the rights and freedoms set out in the *Canadian Bill of Rights*.

56. The Public Order Emergency Proclamation, and the regulations and order that have been made pursuant thereto, also infringe upon individuals' rights to freedom of thought, belief, opinion and expression; freedom of peaceful assembly; and freedom of association guaranteed under section 2 of the *Charter of Rights and Freedoms*.

57. The Public Order Emergency Proclamation and the regulations and order that have made pursuant to this Proclamation are not reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

58. The Public Order Emergency Proclamation is aimed at dealing with what the Prime Minister primarily perceives to be a political emergency by unlawfully attempting to suppress and intimidate the expression of dissenting thoughts, beliefs and opinions of a segment of the Canadian population that the Prime Minister has declared to hold “unacceptable” views. The Proclamation is unlawful and *ultra vires* because there is no “national emergency” nor is there a “public order emergency.” It is also unlawful and *ultra vires* because, *inter alia*, it is a clear breach of the Bill of Rights because it purports to allow Canadians to be deprived of the enjoyment of their property without due process of law.

Rules and Legislation Relied Upon

59. The Applicants rely on the following statutory provisions and rules:

- (a) The *Emergencies Act*;
- (b) The *Canadian Security Intelligence Service Act*;
- (c) Paragraphs 1 (a), (b), (d), and (e) of the *Canadian Bill of Rights*;
- (d) Section 2 of the *Charter of Rights and Freedoms*;
- (e) Section 52 of the *Constitution Act 1982*;
- (f) Sections 18 through 18.4 of the *Federal Courts Act*, RSC 1985, c F-7;
- (g) Rules 3, 300-319, 334.1-334.40 of the *Federal Court Rules*, SOR/98-106; and
- (h) Such further and other statutory provisions and rules as counsel may advise.

This application will be supported by the following material:

- 60. The Affidavit of Kristen Nagle, to be sworn;
- 61. Hansard relating to the *Emergencies Act* R.S.C., 1985, c. 22 (4th Supp.); and
- 62. Such further and other material as counsel may advise and this Honourable Court may permit.

February 17, 2022



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Solicitors for the Applicants

SOR/2021-151, s. 22

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